

1-5	Notice and Hearing for Agency Actions	Part 1 of 6
Authorizing Utah Code: 62a-5-103	Rule: R539-2-5	Rights and Protections
Approved: 8/12/99	Rule Effective:	Printed: 1/00
Form(s): 522-F, 522-I, 490S	Guideline(s): None	

POLICY

Equal Protection and Due Process

The Division seeks to treat all **Person/Representatives** fairly and to afford them due process. A **Person/Representative** with a disability has the right to receive adequate written notice of **Agency Action**, to present grievances about **Agency Action**, and to resolve issues about eligibility by meeting informally with **Division** representatives or by requesting an administrative hearing.

Prompt, Amiable Resolution of Disputes

The **Division** seeks to resolve any disputes with **Persons** and **Provider Agencies** promptly and amiably. For this reason, the **Division** encourages all parties to discuss their issues informally instead of relying solely on the administrative hearing process. As described in more detail below, an **Person/Representative**, the **Division** and other interested parties may use a variety of formal and informal procedures to resolve differences. These procedures are described in Section I of this policy.

PROCEDURES FOR RESOLVING DISPUTES ABOUT “AGENCY ACTIONS”

1. The **Division** Notifies the **Person/Representative** About a Proposed “Agency Action.”
Under the **Utah Code Annotated**, Title 63, Chapter 46b, the **Division** must notify an **Person/Representative** in writing before taking any “agency actions that determine legal rights, duties, privileges, immunities, or other legal interests.” The following provisions describe the format, timing and content of the notice of **Agency Action**.
 - A. Timing and Format for the Notice of **Agency Action**. At least 30 days before the **Division** or the **Region** changes, terminates or reduces a **Person's** services or benefits, or denies or defers a **Person's** request for services, the **Division** or **Region** shall send the **Person/Representative** a written Notice of **Agency Action** on either **Form 522-I** or **Form 522-F**.

Form 522-I is used when the **Person/Representative** has a right to request an *informal* administrative hearing, (e.g., where the **Person's** services are funded by state funds).

Form 522-F is used when the **Person/Representative** has a right to request a formal administrative hearing, (e.g., where the **Person's** services are funded by **Medicaid Waivers** through the Department of Health, Division of Health Care Financing).
 - B. Content of the Notice of **Agency Action**. The Notice of **Agency Action** shall comply with **Utah Code Annotated** 63-46b-3, (Utah Administrative Procedures Act), and shall include a clear and concise explanation of:
 - i. the action that the **Division** or **Region** proposes to take and the date the action will be implemented;
 - ii. the reason for the action;

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- iii. citations for the regulations or statutes that support the **Agency Action**;
- iv. the **Division's** appeal process, including a statement that the **Person/Representative** has a right to a formal administrative hearing (if **Medicaid Waivers** are at issue) or to an informal administrative hearing (if State-funded services are at issue); and
- v. the fact that alternative services are available in a private **Intermediate Care Facility for People with Mental Retardation** (ICF/MR) if it has been determined that the **Person** requires the **Level of Care** provided in an **Intermediate Care Facility for People with Mental Retardation**.

- C. Hearing Request **Form**. To assist a **Person/Representative** in requesting a hearing if one is desired, the **Division** or **Region** shall send the **Person/Representative** a Hearing Request (**Form 490S**) when the **Division** or **Region** sends the Notice of **Agency Action** (**Form 522**).
- D. Further Explanations of the **Agency Action**. If a **Person/Representative** is unable to read or comprehend the written Notice of **Agency Action**, the **Support Coordinator** assigned to that **Person** shall explain and discuss the **Agency Action** with that **Person** directly in addition to mailing the Notice of the **Agency Action** (**Form 522**) to the **Person/Representative**.

2. The **Person/Representative** May Challenge the **Agency Action**.

- A. Hearing Request **Form**. A **Person/Representative** who believes the **Agency Action** is inappropriate or unjustified may request a formal administrative hearing and/or a dispute resolution by mailing a Hearing Request (**Form 490S**) to the **Division** representative listed on the **Form 490S**.
- B. Deadlines for Filing the Hearing Request **Form**. To request a formal or informal administrative hearing, the **Person/Representative** must file a Hearing Request (**Form 490S**) within 30 days of the mailing date shown on the Notice of Agency Action (**Form 522-I** or **Form 522-F**).

IMPORTANT NOTE

This 30-day deadline applies regardless of whether the **Person/Representative** also wishes to participate in the **Division's** dispute resolution process.

- i. 15-Day Deadline for Continuation of Services. If the **Person/Representative** files the Hearing Request within 15 days of the mailing date of the Notice of **Agency Action**, the **Person's** services shall continue unchanged during the

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review and administrative hearing process.

- ii. 30-Day "Outside Deadline." If the **Person/Representative** files the Hearing Request between 16 and 30 days after the mailing date of the Notice of **Agency Action**, the **Person** is entitled to an administrative hearing, but the **Person's** services and benefits will be discontinued during the dispute resolution process or administrative hearing process.
- iii. Waiver of Deadlines If Good Cause Shown. The **Region Director** may waive these 15-day and 30-day deadlines if the **Person/Representative** shows good cause for such a waiver and if such a waiver is not otherwise prohibited by state or federal law. (There may be situations, for example, in which **Medicaid** regulations restrict the **Region's** ability to grant a waiver for a late hearing request.)

3. Division or Region Shall Forward the Administrative Hearing Request to the Appropriate Hearing Office. If the **Person/Representative's** Hearing Request indicates that the **Person/Representative** wants a formal or informal administrative hearing, the **Division** or **Region** shall promptly forward the Hearing Request (**Form** 490S) to the appropriate hearing office.

If the **Person's** support services are funded by any **Division Medicaid Waiver**, the "appropriate hearing office" is the Division of Health Care Financing in the Utah Department of Health.

If the **Person** receives only state funding for support services and receives no funding from a **Medicaid Waiver**, the "appropriate hearing office" is the Office of Administrative Hearings within the **Department**.

If an **Person** receives a combination of State-funded services and **Medicaid Waiver** services, the **Division** or **Region** shall forward copies of the Hearing Request **Form** to both the Office of Administrative Hearings and the Division of Health Care Financing, and shall make reasonable efforts to schedule both administrative hearings on the same date in the same location.

4. The Division's Dispute Resolution Process. The informal dispute resolution process described in this section is designed to help the **Division** respond to a **Person's/ Representative's** concerns without unnecessary formality. The dispute process is not intended, however, to limit a **Person's/Representative's** access to administrative hearings. Even if a **Person/Representative** chooses to use the **Division's** dispute resolution process, that **Person/Representative** may also file a request for an administrative hearing at any time before the 30-day deadline.

When the **Region** receives a Hearing Request (**Form** 490S), the **Region** shall begin the

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following three-step dispute resolution process unless the **Person/Representative** requested otherwise in the Hearing Request **Form**:

STEP 1: The **Region Support Coordinator** Meets with the **Person/Representative** to Explain the Reasons for the **Agency Action**.

Upon receipt of the Hearing Request **Form**, the **Person's Support Coordinator** and other **Region** staff shall attempt to resolve the issue by meeting informally with the **Person/Representative**, explaining the regulations and statutes upon which the action is based, and attempting to resolve any confusion or disagreements.

STEP 2: The **Supervisor** or **Region Director** Reviews the Concerns.

If Step 1 (meeting with the **Support Coordinator**) does not resolve the problem, the **Person/Representative** may request, orally or in writing, that the **Supervisor** or **Region Director** review the **Person's** concern. The **Person/Representative** must submit this request within 10 business days of being notified of the **Support Coordinator's** decision.

The Region Review shall be conducted by the **Supervisor** and/or the **Region Director**, who shall meet with the **Person/Representative** to discuss the issue, make a decision and then notify the **Person/Representative** of the decision.

STEP 3: The **Division Director** Reviews the Concerns.

If the **Person/Representative** is not satisfied with the **Region's** decision, the **Person/Representative** may request, orally or in writing, that the **Division Director** review the concern. The **Person/Representative** must submit this request within 10 business days of being notified of the decision by the **Supervisor** or **Region Director**.

The **Division** review shall be conducted by the **Division Director**, who shall meet with the **Person/Representative** to resolve the issue and who shall then notify the **Person/Representative** of the **Division's** final decision.

If the problem is not resolved during Step 1, Step 2 or Step 3, the **Person/Representative** may request, orally or in writing, that the **Division** proceed with an administrative hearing on the issue. The procedures for requesting an administrative hearing are described in the next section.

5. **Person's/Representative's Decision to Proceed with an Administrative Hearing.** If at any point the **Person/Representative** is dissatisfied with the results of the **Division's** informal dispute resolution process, the **Person/Representative** may proceed to an administrative hearing, as long as the **Person/Representative** filed a timely Hearing Request.

- A. Request to Proceed to Next Level of Appeal. If the **Person/Representative** wishes to

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abandon the dispute resolution process and proceed with the administrative hearing, the **Person/Representative** shall ask the **Division**, either orally or in writing, to forward the **Person/Representative's** initial Request for Hearing (**Form 490S**) to the appropriate hearing office.

If the **Person's** support services are funded by any **Division Medicaid Waiver**, the "appropriate hearing office" is the Division of Health Care Financing in the Utah Department of Health.

If the **Person** receives only state funding for support services, and receives no funding from a **Medicaid Waiver**, the "appropriate hearing office" is the Office of Administrative Hearings within the **Department**.

- B. Hearing Request Filed After Participating in the Dispute Resolution Process. A **Person/Representative** may file a request for an administrative hearing (**Form 490S**) after beginning the **Division's** dispute resolution process, as long as the **Person/Representative** submits the Hearing Request within 30 days of the mailing date of the initial Notice of **Agency Action**.
- C. Documents Forwarded by the **Division** to the Hearing Office. Within 5 business days of receiving the **Person/Representative's** request to proceed with an administrative hearing, the **Division** shall forward the following documents to the appropriate hearing office:
 - i. the **Person/Representative's** initial Request for Administrative Hearing (**Form 490S**);
 - ii. a copy of the Notice of **Agency Action (Form 522)** that the **Division** or **Region** initially sent to the **Person/Representative**;
 - a. written proof that **Form 522** was mailed to or served on the **Person/Representative**; and
 - b. any other relevant information about the **Person** or concerns.
6. Preservation of **Person's/Representative's** Right to a Formal Administrative hearing. The **Division** shall not use the dispute resolution process to unilaterally deprive any **Person** of the right to an administrative hearing. If a **Person/Representative** has requested an administrative hearing, the **Division** shall forward that **Person's** Hearing Request to the appropriate hearing office no later than 20 days after the mailing date of the Notice of **Agency Action**, regardless of whether that **Person** is still participating in the **Division's** dispute resolution process and regardless of whether the **Person/Representative** has requested the **Division** to forward the initial Hearing Request. Nothing in this section shall be deemed to excuse a **Person/Representative's** failure to comply with the deadlines established by this policy or by state or federal law.

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7. Procedures for the Administrative Hearing. The following administrative rules and statutes apply to administrative hearings conducted under this policy:
 - (a) Rule R497-100 (informal hearings in the **Department** of Human Services;
 - (b) Rule R410-14 (formal hearings in the Department of Health, Division of Health Care Financing); and
 - (c) **Utah Code Annotated**, Title 63, Chapter 46b, the Utah Administrative Procedures Act.
8. Who May Participate in the Administrative Hearings or Dispute-Resolution Meetings on Behalf of the **Person**.
 - A. The **Person** and the **Person's Representative**. The **Person** may attend the administrative hearings or dispute-resolution meetings with the **Region** or **Division**. The **Person** may be accompanied or represented by the **Person's** parent or legal guardian or another support **Person**.
 - B. Legal Personnel. The **Person's** attorney or paralegal may attend the administrative hearings or dispute-resolution meetings with the **Region** or **Division**. The **Person's Support Coordinator** may suggest where free legal help may be available for the **Person**. It should be noted, however, that the **Person's** attorney does not necessarily represent the **Person's Representative**.
9. Electronic Recordings of Meetings and Administrative Hearings. Any dispute-resolution meeting or administrative hearing conducted pursuant to this policy may be electronically recorded if the **Person/Representative** signs a written consent before the recording begins and if the **Person/Representative's** written consent is entered into the **Person's** file or hearing record. Upon request from the **Person** or any other participant in the meeting or administrative hearing, the **Region** or **Division** staff shall record the meeting or administrative hearing. If someone other than an employee of the **Region** or **Division** records the meeting or administrative hearing, the **Region** or **Division** shall also record the meeting or administrative hearing. If the **Person/Representative** requests a copy of such recording pursuant to **Utah Code Annotated**, Title 63, Chapter 2 (Government Records Access and Management Act), the **Division** shall provide the requested copy free of charge.